

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

AUDREY WILLIAMS

VS.

U.S. XPRESS, INC.

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Civil Action No.: 3:17-cv-217

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant, U.S. Xpress, Inc. (“Defendant”), files this Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, removing this dispute to the United States District Court for the Southern District of Texas, Galveston Division.

I. PENDING STATE SUIT

1. On June 15, 2017, Plaintiff, Audrey Williams (“Plaintiffs”), commenced an action in the 23rd Judicial District Court of Brazoria County, Texas, captioned Cause No. 92193-CV; *Audrey Williams v. U.S. Xpress, Inc.*, in which Plaintiff sought damages allegedly resulting from a motor vehicle collision that occurred on or about May 26, 2016, in Pearland, Brazoria County, Texas. *See* Plaintiffs’ Original Petition at ¶ 7, Ex. A.

II. GROUNDS FOR REMOVAL

2. The state court action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, and may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action wherein the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and diversity of citizenship exists between the properly joined parties.

A. Amount In Controversy Exceeds \$75,000

3. Under 28 U.S.C. §1446(c)(2), if removal is sought on the basis of the jurisdiction conferred by 28 U.S.C. §1332, the sum demanded in good faith in the initial pleadings shall be deemed to be the amount in controversy. *See* 28 U.S.C. §1446(c)(2). In her Original Petition, Plaintiff claims to have suffered “permanent serious, disabling injuries” as a result of the alleged collision. *See* Plaintiff’s Original Petition at ¶ 12, Ex. A. Plaintiff seeks to recover past and future: medical expenses, physical pain, mental anguish, and physical impairment and disfigurement. *Id.* at ¶ 13.

4. Additionally, Plaintiff specifically pleaded both that she “seeks monetary damages in excess of \$100,000” and “monetary relief of \$100,000 to not more than \$500,000.” *Id.* at ¶ 1 and 12. Plaintiff was not obligated to plead that she sought monetary relief in excess of \$100,000 or between \$100,000 and \$500,000. *See* Tex. R. Civ. P. 47(c) (permitting a plaintiff to plead for monetary relief of \$100,000 or less, over \$100,000 but not more than \$200,000; over \$200,000 but not more than \$1,000,000; or over \$1,000,000). Therefore, Plaintiff believes her damages are more than \$75,000.

B. Diversity of Citizenship

5. Plaintiff is a citizen of Texas. *See* Plaintiff’s Original Petition at ¶ 3, Ex. A.

6. Defendant, U.S. Xpress, Inc., is a corporation existing under the laws of the State of Nevada with its principal place of business in the State of Tennessee.

III. PROCEDURAL REQUIREMENTS FOR REMOVAL

7. Upon filing of this Notice of Removal of the cause, Defendant gave written notice of the filing to the Plaintiff and her counsel as required by law. A copy of this Notice is also being filed with the Clerk of the Court in Brazoria County, Texas, where this cause was

originally filed. A copy of all processes, pleadings, and orders has been filed separately with this Court pursuant to 28 U.S.C. § 1446(a). This removal is timely filed within 30 days of Plaintiff's lawsuit being served upon Defendant, U.S. Xpress, Inc.

IV. STATE COURT DOCUMENTS

8. The following documents are attached to this Notice of Removal:

Exhibit "A" Plaintiff's Original Petition

Exhibit "B" Proof of Service

Exhibit "C" Defendant's Original Answer.

Exhibit "D" An index of matters being filed.

D-1 Copy of the state court Docket Sheet/Record.

D-2 Copy of process.

D-3 A list of all counsel of record, addresses, telephone numbers, and parties.

D-4 Civil Cover Sheet

V. TIMING OF REMOVAL

9. Defendant, U.S. Xpress, Inc., was served with Plaintiff's Original Petition on or about June 21, 2017.

10. This Notice of Removal is being filed within 30 days of service of the Plaintiff's Original Petition and is timely filed under 28 U.S.C. § 1446(b).

VI. VENUE

11. This is a statutorily proper venue under the provisions of 28 U.S.C. § 1441(a) because this district and division embrace the county where the removed action was pending.

VII. JURY DEMAND

12. Defendant hereby requests a trial by jury pursuant to FED. R. CIV. P. 38.

VIII. ANSWER

13. In addition to the Notice of Filing of Notice of Removal as required by the FEDERAL RULES OF CIVIL PROCEDURE, Defendant has filed an Original Answer in the state court action.

IX. PRAYER

14. Defendant, U.S. Xpress, Inc., has established that the amount in controversy exceeds \$75,000.00. Additionally, Defendant has established that diversity of citizenship exists between the properly joined parties in this case. For these reasons, and in conformity with 28 U.S.C. § 1446, Defendant respectfully removes the civil action captioned Cause No. 92193-CV; *Audrey Williams v. U.S. Xpress, Inc.*, in the 23rd Judicial District Court of Brazoria County, Texas. Defendant prays for such other and further relief, both general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ Les Pickett

Les Pickett

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been forwarded to the following known counsel of record as indicated below on the 6th day of July, 2017:

Via Electronic Notification

Joseph K. Plumber
LAW OFFICES OF JOSEPH K. PLUMBAR
1200 Rothwell Street
Houston, Texas 77002

/s/ Les Pickett

Les Pickett
Manuel Cabrera